

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**UNITED STATES OF AMERICA
PLAINTIFF,**

CASE #:10-20403-NGE

VS.

HON. NANCY G. EDMUNDS

**KWAME KILPATRICK
DEFENDANT.**

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AUSA R. Michael Bullotta
AUSA Jennifer Leigh Blackwell
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DEFENDANT KWAME KILPATRICK'S SENTENCING MEMORANDUM

I. INTRODUCTION

Kwame Malik Kilpatrick was convicted by a jury on March 11, 2013. He is scheduled to appear before this Court for sentencing on October 10, 2013. This memorandum is submitted to assist this court in applying the principles codified in 18 USC §3553(a)

Pursuant to 18 USC §3553(a), it is this Court's responsibility to "impose a sentence sufficient but not greater than necessary" to accomplish the purposes set forth in §3553(a), including to reflect the seriousness of the offenses, to promote respect for the law, to provide just punishment, and to afford adequate deterrence. To carry out this duty, §3553(a) requires the court to consider both the history and characteristics of this defendant as well as the nature of the offenses.

The Supreme Court explained in *Rita v. United States*, 551 US 338, 347-48 (2007), that §3553(a) “tells the sentencing judge to consider (1) offense and offender characteristics; (2) the need for a sentence to reflect the basic aims of sentencing, namely (a) just punishment (retribution), (b) deterrence, (c) incapacitation, and (d) rehabilitation; (3) the sentences legally available; (4) the Sentencing Guidelines; (5) Sentencing Commission policy statements; (6) the need to avoid unwarranted disparities; and, (7) the need for restitution.”

Section 3553(a) mandates that the court make an individualized assessment of each of its factors as applied in this case to Mr. Kilpatrick. *Gall v. United States*, 552 US 38 (2007). Among these factors, a calculation of the guideline range serves only as a starting point. *Rita v. United States*, 551 US 338 (2007) (“... the sentencing statute envisions both the sentencing judge and the Commission as carrying out the same basic objectives, the one, at retail, the other at wholesale.” *Id* at 2463). While the guidelines’ methodology requires consideration of many of the same factors that must be reviewed pursuant to 18 USC §3553(a), the guidelines work only at a generalized level. *Gall*, 552 US at 50.

Kwame Kilpatrick resigned as Mayor of the City of Detroit on September 18, 2008, more than 5 years ago. This case concerns events that took place from 2002 to 2008. The Government’s attempt to roll the City of Detroit’s 2013 bankruptcy filing into the instant case oversimplifies the complex problems that Detroit has faced for more than five decades. (R471, Government Sentencing Memorandum, p. 37). See: Sugrue, Thomas, “*The Origins of the Urban Crisis: Race and Inequality in Post War*

Detroit,” Princeton University Press, 2005. While blaming Kilpatrick for Detroit’s current status feeds the prejudices of uninformed bloggers and online opinion polls, it is a cheap shot to argue that the losses occasioned in this case led to Detroit’s filing for bankruptcy. All of the RICO and extortion counts of conviction of the Indictment concern necessary DWSD contracts that were properly completed. The mail and wire fraud charges involved a private fund, not city money.

Based on a review of all of the §3553(a) factors discussed below, Defendant respectfully urges this Court to determine that a sentence of not more than 180 months is “sufficient, but not greater than necessary” to accomplish the purposes required by §3553(a).

II. 18 USC §3553(A)(1) - KWAME MALIK KILPATRICK’S BACKGROUND AND CHARACTERISTICS.

18 USC §3553(a) explicitly recognizes that the conduct that brought Defendant before the Court can only be viewed within the context of his entire life. In determining a sentence, the court must consider not only the nature and circumstances of the offense, but also the history and characteristics of the defendant. 18 USC §3553(a)(1) codifies the fundamental principle that the court is to sentence a human being and not merely his misdeeds.

As an initial matter, the Government’s argument that “Positive Actions as Mayor,” (R471, Sentencing Memorandum, pp. 33-34), has no place in this Court’s responsibility to consider the background and characteristics of Defendant is simply wrong and is based on a misreading of the decision in *United States v. Peppel*, 707

F3d 627, 640-41 (6th Cir. 2013), on which the Government chiefly relies. In *Peppel*, the Sixth Circuit held that a district court abused its discretion when it failed to explain how a seven day sentence adequately reflected the seriousness of the offense. 707 F3d at 640. Contrary to the Government's argument, the Sixth Circuit did not prohibit the district court's consideration of evidence of the defendant's positive history and characteristics under §3553(a)(1). Instead, as part of its holding that the district court's seven day sentence was unreasonable, the Sixth Circuit concluded that the district court placed undue weight on the defendant's history and characteristics, including his civic, charitable, or prior good works. *Id* at 640-641.

Furthermore, 18 USC §3553(a)(1) expressly requires the Court to consider the history and characteristics of the defendant. Under the Government's interpretation of §3553(a)(1), the Government appears to contend that the only conduct of Defendant relevant to this Court's determination of the sentence is Mr. Kilpatrick's prior misconduct. This is simply not the law. As stated by the Supreme Court in *Gall v. United States*, 552 US 38, 52 (2007), "It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometime mitigate, sometimes magnify, the crime and the punishment to ensue." The Government's argument that Mr. Kilpatrick's positive history and characteristics are irrelevant is wrong.

A. BACKGROUND AND CHARACTERISTICS OF THE DEFENDANT

The historic onslaught of media criticism focused on Kwame Kilpatrick as a political figure for over almost a decade has mostly ignored his life as a son, husband, father, and friend. It has also obscured his substantial accomplishments as an elected politician, first as a state legislator for over three years and subsequently as Mayor of the City of Detroit for over eight years.

Kwame Malik Kilpatrick was born on June 8, 1970 in Detroit, the oldest of three children born to Bernard and Carolyn Cheeks Kilpatrick. He learned from an early age to place a high value on public service and to love the City of Detroit and its people. Both of his parents were Detroit Public School teachers when he was a young child. His father, Bernard, taught at middle school and his mother, Carolyn, taught at Murray Wright High School. Kilpatrick's first exposure to political activity was as a six year old passing out literature door-to-door for his church, The Shrine of the Black Madonna, a church with a long tradition of community activism. His mother, Carolyn, was elected to the State Legislature for the Ninth House District in 1978 representing northwest Detroit when Defendant was eight years old. She served in the Michigan House of Representatives for 18 years before she was elected to the United States Congress in 1996. Kilpatrick still remembers sitting on his mother's lap during her first swearing-in ceremony at the State Capitol Building. His father, Bernard, was elected to the Wayne County Board of Commissioners four years later. His parents divorced in 1981 but remained amicable. Kwame Kilpatrick was intellectually stimulated by his mother's service in

the state legislature to learn how representative government worked and began to develop his lifelong love of politics, a love from which the convictions in this case will now exclude him. He later became fascinated with the office of Mayor of the City of Detroit when, after winning an award as an elementary school student, he was personally greeted by then Mayor Coleman A. Young.

After graduation from Cass Technical High School, Kilpatrick attended Florida A&M University in Tallahassee, Florida where he obtained a bachelors degree with honors with a major in political science in 1992. While there, he met Carlita Ebony Poles, a native of Washington, D.C. Heeding his mother's insistence that he had a responsibility to return and to give back to his community that raised him, he and Carlita moved back to Detroit after their college graduations in June 1993. They married about two years later on September 9, 1995. Their twin sons, Jelani and Jalil, were born in 1996. Their third son, Jonas, was born in 2001.

Upon his return to Detroit, Mr. Kilpatrick spent three and a half years as a middle school teacher at the Marcus Garvey Academy in Detroit. Kilpatrick loved teaching school and found his job was both challenging and rewarding. He obtained great personal satisfaction from helping his teenage students improve their reading skills. He started a middle school basketball team and formed a Boy Scout Troop for students so that he could take them to a summer camp to enrich their young lives. Kilpatrick has described this work as the best job he ever had.

His mother's election to the United States Congress in 1996 encouraged him to serve his community through an elective office. At 26 years old, he had his first

successful political campaign and won election to the state House seat his mother had vacated. He served there until January 2001 when he was sworn in for his first term as Mayor of the City of Detroit. His endless energy and willingness to build bipartisan support in the state legislature also led him to achieve legislative successes well before he was 30. His colleagues elevated him to leadership ranks within the legislature. While serving as a state representative, he won a state-wide campaign for the position of minority floor leader for the Michigan Democratic party from 1998 to 2000 and House minority leader in 2001. He was the first African-American to hold those positions. During the same time period, and despite his young twins at home, he began and completed law school at Detroit College of Law.

In 2001, Kilpatrick launched his first campaign for Mayor of the City of Detroit. He did it with the same degree of energy and purpose to serve that he brought to the state legislature. His campaign was motivated by his lifelong feeling of kinship to the people of Detroit, his love of politics, and his vision for creating a better city for Detroiters learned at his church. After his inauguration in January 2002, he worked 18 hour days with some regularity. He showed up at crime scenes and on the streets to make sure they were cleared after snowfalls. His life became the City and quality time with his family took second place. His work put an enormous strain on his relationship with his wife and took him away from the young sons to whom he is devoted.

On his inauguration in January 2002 as the Mayor of the City of Detroit, Kilpatrick faced over problems inherited from prior mayoral administrations: high

crime rates, federal oversight of the police department, dysfunctional city departments using out-of-date equipment and staffed by city employees resistant to change, the federal government's attempts to rescind an \$18 million HUD grant, a demand by the three casinos in Detroit for the return of \$150 million loaned by them for land acquisitions for their permanent sites, and a newly elected city council with many inexperienced members. The priorities outlined in his first inauguration speech included economic development, public safety, creating a "Mayor's Time" after school program for youth, and an emergency city wide clean-up. About 7,000 children signed up for the after-school program as a result of the Mayor's Time kick-off on September 28, 2002.

The almost constant barrage of critical, hostile, and deprecating commentary in the media that began within about two years after he took office, has served to obscure numerous and significant accomplishments of Kilpatrick and his administration during his seven years as Mayor.

At the very beginning of his first year in office, at about the time period relevant to the trial testimony concerning the DWSD contract, CS 1368 (the as-needed sewer repair contract), which, according to the Government's theory at trial, was unnecessarily being held up, there was much more going on in his administration than approval of water department contracts which the outgoing mayor had not approved. Kilpatrick completed nationwide searches for top level executives for police, law, water, public works and chief operating officer. The people recruited to fill those positions included Carolyn Williams Meza, recruited

from Chicago to serve as the city's Chief Operating Officer; Dave Rayford, a retired Comerica IT director, recruited to serve as Chief Information Officer; Ruth Carter, a former Wayne County prosecutor who served as Corporation Counsel; Sean Werdlow, former treasurer of the Detroit Medical Center who served as Chief Financial Officer; Walt Watkins, a former president of Bank One of Michigan who served as Chief Development Officer; and Hurley Coleman who served as Director of Parks and Recreation. At the same time, the Kilpatrick administration also successfully pleaded its case with the federal government and was allowed to keep the disputed \$18 million HUD grant and it resolved the differences with the three casinos to ultimately require no pay back by the City of their \$150 million loans, settle on permanent locations for each casino, and increase their agreed upon rates for monthly taxes they have continued to pay to the City since then which has become a significant part of the city's monthly cash flow.

Kwame Kilpatrick's campaign to improve the quality of life in the city also bore fruit. During his tenure as Mayor, 37 new or redesigned city parks were developed. Grass cutting and maintenance of parks and public spaces was much improved. Five new recreation centers, the first in the city in over 20 years, were built. More city streets were resurfaced than during any prior administration. The "Motor City Make Over" effort was initiated in 2003, engaging more than 30,000 volunteers and creating a city-wide, neighborhood-by-neighborhood, effort to radically improve the cleanliness of the city, and resulting in removal of debris, abandoned cars and discarded tires.

Kilpatrick also worked to make essential city services more accessible to Detroit's citizens. The Mayor's Office of Community Affairs (MCOA) and a new 311 Call Center, were created to reconnect citizens to City Hall. Response time to neighborhood issues was dramatically improved. Notoriously high city property taxes for 20 city neighborhoods were cut in order to provide an incentive to keep residents in the city and maintain the integrity of still viable neighborhoods. This was accomplished through the Neighborhood Enterprise Zone Act, a proposal submitted by the Kilpatrick administration to Governor Engler and approved by the state legislature. Grass was cut in public parks on a 10-day rotation during summer months. New five year labor agreements, with no increase in wages for the first two years, were negotiated with city employee unions. In December 2006, the city began a five-year strategic plan focusing on rejuvenation of Detroit neighborhoods, the Next Detroit Neighborhood Initiative (NDNI). NDNI started with a focus on six neighborhoods and the need to create new retail centers within Detroit.

Kilpatrick's administration improved law enforcement. Reported crime numbers dropped by late 2003 and into 2004 because of a detailed crime reduction strategy. New police, fire and EMS communications capacity and centers replaced outdated police equipment with state-of-the-art mobile data computers. New radios, bulletproof vests, new vehicles, and weapons were also purchased for the police department. The City also created a nationally recognized Emergency Response plan that performed perfectly during the August 2003 power "black-out" that paralyzed all of the east coast.

Among the economic development gains of Defendant's administration was the successful completion of the city's downtown "Gateway Project" to upgrade all major access arteries into downtown Detroit for the upcoming 2005 Major League All-Star Game and the 2006 Super Bowl XL. This required coordination of all city departments and was completed in an amazingly short time of three years. These sporting events brought tens of thousands of visitors and millions of dollars in revenue to Detroit, and generated highly positive national media report for the City, and brought residents from the nine county metro Southeastern Michigan region into the City to work together as volunteers.

Mr. Kilpatrick's administration also helped to open the renovated Westin Book Cadillac Hotel, Holiday Inn Express Hotel on Washington Boulevard, the Pick Fort Shelby Hotel, the Hilton Garden Hotel, and brought Quicken Loans to the city. The Detroit Riverfront Conservancy was founded in 2003 with a \$50 million pledge from the Kresge Foundation, leading to the opening of the Detroit International River Walk in the summer of 2007 and connecting to the Dequindre Cut, a walkway from the riverfront to Eastern Market, and the 31 acre Tri-Centennial State Park and Harbor. <http://www.crainsdetroit.com/article/20080904?FREE/809049987/the-kilpatrick-scorecard>. Under Kilpatrick's direction, the city was responsible for construction of the new Port Authority passenger terminal at Hart Plaza; the privately funded development of Campus Martius, a 1.6 acre park in the middle of downtown; the new Rosa Parks Transit Center; and for fostering the opening of 25 new restaurants and bringing more than 75 new businesses to downtown, including

Rock Ventures and Quicken Loans. Many of these developments were fostered through close working relationships between Mr. Kilpatrick's administration and major corporations and foundations such as the Kresge Foundation and the W.K. Kellogg Foundation.

As set forth in the PSR, Mr. Kilpatrick's history includes two prior convictions. What the Government has ignored, however, is how Mr. Kilpatrick was punished for these convictions: 120 days in the Wayne County Jail in 2008, locked down in a single cell 23 hours a day because he was a "high profile" inmate until his release on February 3, 2009, and 18 months to five years custody in May 2010 for a probation violation. In each instance, Defendant was treated differently because of his public status; not better but more severely than other individuals. For example, in 2010, after he completed the usual initial stay at the MDOC classification facility, he was transferred to the Oaks Correctional Facility in Manistee County, where he was held in the "SHU," the Segregated Housing Unit, for nearly six months, and confined to his cell 23 hours per day. After his Indictment in this case in 2010, he was transported in custody to FDC Milan and locked down in the FCI's SHU for 10 days. He was ultimately released on bond in his federal case after completion of his state custodial sentence on August 2, 2011. He remained on bond until the return of the verdicts in this case on March 11, 2013 when he was remanded to custody.

B. OFFENSE CONDUCT - THE NATURE AND CIRCUMSTANCES OF THE OFFENSE.

Defendant's offenses of conviction are very serious and nothing stated in Defendant's Sentencing Memoranda are intended in any way to suggest otherwise. Generally, evidence is viewed in a light most favorable to the prosecution after a verdict. *Jackson v. Virginia*, 443 US 307, 319 (1979). For guideline calculations and sentencing, Rules of Evidence do not apply and hearsay may be used without regard to the defendant's right of confrontation so long as there is some "minimal indicia of reliability" in the information considered. USSG §6A1.3. However, Defendant urges the Court to carefully scrutinize the many allegations and descriptions of conduct proffered by the Government in support of the recitation of events it claims should fall within the ambit of the "nature and circumstances of the offense" because much of what the Government claims as "fact" was either not decided by the jury's verdict or even presented as admissible evidence at trial. Defendant also urges scrutiny and weighing of all of the facts the Court determines should appropriately come within the scope of Defendant's offenses because the Government urges incarceration of almost three decades.

The jury deliberated on 30 counts charged against Mr. Kilpatrick. It found him guilty on 24, including RICO conspiracy, extortion, bribery, 14 instances of mail or wire fraud, and tax offenses. The jury found Defendant not guilty or reached no consensus on six counts. The jury was not asked to find specific acts of extortion that were alleged in the RICO conspiracy but not charged in other counts, including the Book Cadillac Hotel demolition, Heilman Recreation Center, Downtown Water Main contracts CM 2012, WS 658 and WS 651. That means that while the

Government and the PSR urge that “profits generated” on 11 DWSD contracts should be used to determine the amount of “value received” by Defendant and to increase the guideline range by 20 levels, the Government only asked the jury to decide Defendant’s guilt on five of them. Similarly, the jury was not asked to make any specific finding as to four acts of bribery alleged in the RICO conspiracy but not charged as separate counts – the allegations by Karl Kado, Jon Rutherford, James Rosendall and Tony Soave. The jury could have reached a guilty verdict for RICO conspiracy if it found only that there was **an agreement to commit at least two acts of racketeering**. (Emphasis added). It was not required to find that any particular acts actually were committed. Similarly, the charges of mail and wire fraud required the jury only to find that the alleged uses of the mail or wire communications were done in furtherance of a scheme to defraud and Defendant’s jury was allowed to find a scheme existed without specificity as to its components.

The sentence guidelines that have been calculated by the Probation Department are based on the guideline section for extortion offenses, USSG §2C1.1, and involve the extortion offenses alleged as incorporated within the Count 1 RICO conspiracy offense and in Counts 2-5, 9 and 10. As to these counts, it was the Government’s theory that Kilpatrick “steered” subcontract work to Bobby Ferguson or used his authority as Special Administrator up to December 2005. In total, they concern nine DWSD contracts, the Book Cadillac Hotel project and Heilman Recreation Center.

In context, the DWSD had about \$4 billion in vendor contracts and some 40-

60 contracts a year during the time period of 2002-2008. Bobby Ferguson's subcontracts during that period represented less than 3% of that total amount. Darryl Latimer, a Government witness and DWSD contracts and grants manager during the relevant time of this case, testified about the culture in the DWSD department which preceded Defendant's election as Mayor and which was characterized by DWSD engineers leaking information to and steering contracts to their favorite contractors. (R360, TR 11/28/12, D. Latimer, pp. 44-45). Government witness Dan Edward, DWSD manager of construction contracts, testified the use of Detroit based companies as "fronts" was a frequent practice by contractors eager to get the lucrative DWSD business. Edwards testified Defendant's administration intended to end the use of "front companies" by insisting on real work for Detroit-based businesses as part of the DWSD contracts. (R349, TR 10/23/12, D. Edwards, pp. 96-98). The Government presented many examples of text messages between Kwame Kilpatrick and Bobby Ferguson. There was no dispute that they were close friends. Their friendship was public information. Many of the Government's witnesses testified that Bobby Ferguson was demanding in his dealings with contractors, that he was a bully, and that he always wanted more money. It was the Government's theory that Mr. Kilpatrick "steered" work to Ferguson. According to some Government witnesses, in some cases there was no steering by Defendant. The contractors gave in to Ferguson's demands because they assumed that it would help their chances of success to have Ferguson on their team and because they made sufficient profits to justify doing so.

III. GENERAL AND SPECIFIC DETERRENCE – 18 USC §3553(a)(2)(B) & (C)

The media scrutiny of Mr. Kilpatrick's conduct and personal life over the last decade, state and federal criminal investigations, incarceration by state authorities before the trial in this case, the jury's guilty verdict, and this Court's remand of Mr. Kilpatrick into custody on March 11, 2013, where he has remained, should leave no question that the goals of individual and general deterrence have been accomplished in this case.

Mr. Kilpatrick entered guilty pleas in state court in September 2008 to two charges of obstruction of justice relating to his testimony in the Gary Brown civil case and a no contest plea to the charge of obstructing a police officer in an unrelated incident. He also resigned his office effective September 18, 2008 and was later sentenced to 120 days in jail and ordered to pay restitution of \$1 million, forfeit his State of Michigan pension, and surrender his license to practice law.

Mr. Kilpatrick, now at the age of 43, has no realistic possibility of again holding any public office. Michigan voters approved an amendment to the state constitution in 2010, now titled Article XI § 8, that makes any individual ineligible to hold any position in public employment for 20 years that "is policy-making or that has discretionary authority over public assets," if he has been convicted of a felony involving dishonesty, deceit, fraud, or a breach of public trust. The so-called "Kilpatrick amendment" applied to Defendant.

In assessing the need for punishment, this Court should also consider Mr. Kilpatrick's current circumstances: he is infamous, destitute, and disgraced. He

already has a \$1 million restitution obligation which he obviously will not be able to repay in any realistic way during the period of incarceration imposed by this Court and there will undoubtedly be additional enormous restitution ordered by this Court. Whatever income potential he may have in the future will effectively be pledged to pay these staggering restitution debts. Defendant does not suggest that his personal losses should be considered as sufficient punishment. Defendant requests this Court consider them as one factor in deciding what amount of custodial punishment is “sufficient but not greater than necessary” and just. It is also clear that incarceration is unnecessary to provide Defendant with educational or vocational training or rehabilitation. He has never abused alcohol or narcotics and poses no danger to the public.

For almost the past 10 years, Mr. Kilpatrick and his family have lived under a cloud of media scrutiny, skepticism, and a torrent of derogatory criticism. Every aspect of his political and his family’s personal lives have been scrutinized. Beginning with stories about a wild 2002 party at the city’s mayoral residence, the Manoogian Mansion, that have since been described as an “urban legend” because the party was found to have never occurred, the spotlight has shone unfairly on his wife as well as on him. Hackney, Suzette, “Paramedic: Woman said she was attacked by Carlita Kilpatrick, 10/23/08, <<http://www.freep.com/article/20081023/NEWS01/81023101/?imw=Y>>. The 2007 civil trial of whistle-blower claims, its verdict and subsequent settlement, the Wayne County investigation that followed with criminal charges, guilty pleas in that case and all of its proceedings,

Mr. Kilpatrick's resignation from office and then the investigation, charge and trial in this case, have all been followed by intense local and national media coverage.

"Detroit Mayor Charged with Perjury," USA Today, 3/25/08, www.USATODAY.com.

According to one media outlet, Kwame Kilpatrick became a "lightning rod for Detroit's resentment [of politicians]." Bennett, John K., "Blame for Detroit's Problems Falls on You, the Voters," Huffington Post, 1/4/12. The relentless and at times cruel media attention has assured that anyone who lives in Michigan or Texas, where Mr. Kilpatrick moved his family in 2008, is exposed to all of these stories.

The fall-out has also negatively impacted his mother's political career. On August 3, 2010, his mother Carolyn Cheeks Kilpatrick, a seven term Congresswoman from Michigan's 13th Congressional District who had been unanimously elected as the chairwoman of the Congressional Black Caucus in the 110th Congress (2007-2009), lost in the Democratic primary to a former state legislator by a margin of 47 to 41%. Her loss was viewed by many political observers as "due in part to the fall of Kilpatrick's son Kwame," and meant "that a once-prominent political family will have been swept out of public office." Montopoli, Brian, CBS News, 8/4/10, http://www.cbsnews.com/8301-503544_162-20012628-503544.html.

His wife, Carlita Kilpatrick, and the young lives of their children continue to fall within the shadow of the media focus on the life of Kwame Kilpatrick. Even to the present, the events of Mrs. Kilpatrick's life in a distant city are front page news

in the Detroit media. “Kwame Kilpatrick’s Wife Reportedly solicits Money For Sons Private Education,” 1/18/13, <[www.http://CBS Detroit](http://CBSDetroit.com)>; “Carlita Kilpatrick Loses Job, Moves Family Out of Mansion, Deadline Detroit, 7/23/13; Burns, Gus, “Kwame Kilpatrick’s Wife Loses Job, Home in Texas,” Burns, Gus, 7/23/13 <Mlive.com>; “Video Captures Carlita Kilpatrick Being Questioned Over Cash,” <<http://blackamericaweb.com>>, 9/25/13.

All of these facts should indisputably serve as powerful arguments that the goals of specific and general deterrence have already been met. In these circumstances it should be a certainty that Defendant could not and would not ever again engage in conduct of the kind that brought him before this court.

The concern of general deterrence has also been more than met. Anyone who knows only the outlines of these events now understands that the allegations of the kind leveled at Kwame Kilpatrick lead to indelible public scorn, criminal conviction, and humiliation for the accused public official and for his family.

IV. 18 USC §3553(a)(2)(A) and (3)

This Court must determine the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and just punishment, §3553(a)(2)(A).

Defendant’s offenses are all Class C or Class E felonies. All of Defendant’s convictions are eligible for sentences of probation. 18 USC §3561(a). Defendant assumes this Court will impose incarceration. Incarceration need not be amplified by adoption of the Government’s recommendation of 28 years.

V. 18 USC §3553(a)(4) - THE KINDS OF SENTENCES AVAILABLE AND THE GUIDELINE RANGE.

Defendant does not concur with the guideline range posited by the PSR. His objections to those scorings and his arguments for a sentence that varies and departs from the range determined by this Court were filed separately and docketed as R472. Defendant incorporates those arguments herein as his argument regarding §3553(a)(4).

VI. 18 USC §3553(a)(5) - ANY PERTINENT POLICY STATEMENTS OF THE COMMISSION.

There are no relevant policy statements.

VII. AVOIDANCE OF UNWANTED SENTENCING DISPARITY – 18 USC §3553(a)(6)

18 USC §3553(a)(6) mandates the sentencing court to consider “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” Of course, no two cases and no two defendants are alike, even where their offenses of conviction are the same. The sentencing statutes require the Court make an independent assessment of the unique circumstances of the individual before it. *Koon v. United States*, 518 US 81, 113 (1996).

But it is still helpful for this Court to consider the offenses of conviction and the sentences imposed in other cases, and to compare those defendants’ guideline ranges (where available) and the sentences imposed in those cases, a step the Government here skipped. A comparison of the guideline ranges to the sentences imposed on these other defendants makes it clear that, in most cases, the

sentencing courts have imposed sentences well below the guideline ranges or the government's recommendations. The *Dimora* case, which the Government here uses as its singular comparison, is an outlier to the general pattern of sentences for federal bribery and extortion convictions.

A. OTHER CASES

A review of the cases discussed below, makes clear that other courts evaluating similar conduct have largely imposed sentences lower than the Government's recommended 28 years, even where the guideline ranges are much the same as the one recommended for Mr. Kilpatrick. A longer list with corresponding case citations is included as Exhibit A. Defendant respectfully suggests that consideration of this factor strongly militates in favor of a sentence of less than fifteen years.

1. Illinois Governor Rod Blagojevich

In 2011, a federal jury convicted former Illinois Governor Rod Blagojevich of 17 of 20 felony counts of bribery during his tenure as governor, including his effort in 2008 to illegally trade the appointment of a United States Senator in exchange for \$1.5 million in campaign contributions or other personal benefits. See Department of Justice Press Release Regarding Sentencing for Rod Blagojevich, available online at www.justice.gov/usao/iln/hot/us_v_bлагоjevich_exhibits/2011_12_07/pr1207_1.pdf. Gov. Blagojevich also was convicted of "shaking down" the chief executive of a children's hospital for \$25,000 in campaign contributions in exchange for implementing an increase to pediatric reimbursement rates, holding

up a bill to benefit the Illinois horse racing industry in an attempt to illegally obtain \$100,000 in campaign contributions, and lying to the FBI in 2005. *Id.*

During sentencing, district court Judge James Zagel found that the federal sentencing guidelines scored under USSG §2C1.1 provided for a sentence range of 30 years to life. *Id.* However, Judge Zagel determined that the guideline range was not appropriate within the context of the case and found an “effective guideline range of 188-235 months.” *Id.* Judge Zagel further reduced the guideline range to 151-188 months after finding that Gov. Blagojevich accepted responsibility for his crimes. The government recommended a sentence of 15-20 years. Judge Zagel imposed a sentence of 14 years.

2. Congressman William J. Jefferson

In 2009, Congressman William J. Jefferson was convicted of 11 counts, including conspiracy to commit bribery, honest services fraud, racketeering, and money laundering. *United States v. Jefferson*, No. 1:07-CR-00209 (ED Va April 20, 2012). Jefferson used his position as an elected member of the U.S. House of Representatives to seek, solicit and direct that things of value be paid to himself and his family members in exchange for his official acts to advance the interests of the people and businesses that offered him bribes. See Department of Justice Press Release for Sentencing of William Jefferson, available online at www.justice.gov/opa/pr/2009/November/09-crm-1231.html>. This conduct included funneling approximately \$470,000 to shell companies. *Id.*

As a result of his convictions, Rep. Jefferson faced a sentencing guideline

range of 262-327 months. However, district court Judge T.S. Ellis, III imposed a sentence of 156 months, *Id.*, or about one half of the sentence guideline range. *United States v. Jefferson*, No. 1:07-CR-00209 (ED Va April 20, 2012). For his statement of reasons attached to Mr. Jefferson's Judgment, (Exhibit B), Judge T.S. Ellis, III indicated specifically that the 156 month sentence imposed was sufficient to reflect the seriousness of the offense, to provide adequate deterrence, to protect the public and to avoid unwarranted disparities.

3. Congressman Randall "Duke" Cunningham

Congressman Randall "Duke" Cunningham pled guilty to two offenses: conspiracy to accept bribes and honest services fraud and to tax evasion. According to the Government, he, "in effect, erected a 'for sale' sign upon our nations' capital." (Government's Sentencing Memorandum, *United States v. Cunningham*, Case No. 05-2137, S.D. Calif., 2006). The Government claimed Cunningham received at least \$2.4 million in bribes as cash, checks, antiques, furniture, yacht club fees, boat repairs, moving expenses, and vacation expenses. The investigation revealed that Cunningham actually maintained a written "bribe menu" listing what he would require for up-front delivery of earmarks and contracts in different dollar amounts. The Government argued that his conduct was a "numbing betrayal, on an epic scale", a "stunning betrayal of public trust", and that "the length, breadth, and depth of Cunningham's crimes against the people of the United States are unprecedented for a sitting Member of Congress." *Id.*, at pp. 2-3.

The statutory maximum of each offense to which Cunningham pled guilty

was five years so the guideline range was potentially 120 months. Cunningham's offense score, taking into account adjustments for aggravating role, obstruction of justice, acceptance of responsibility and substantial assistance was 36, corresponding to a range of 188-235 months, and well above the 120 month statutory maximum allowed by the two counts of conviction. Mr. Cunningham was sentenced on March 3, 2006 by the Hon. Larry Alan Burns to a total term of 100 months, 20 months below the total statutory maximum, a sentence representing about one half of the guideline range mid-point.

4. Larry P. Langford

Larry Langford was the President of the Jefferson County Commission and then the Mayor of Birmingham, Alabama for about 4 years. The Government alleged that he took over \$241,000 in cash, loan payoffs, expensive clothes and jewelry from an investment banker and a lobbyist in return for including them in highly lucrative county financial transactions which generated about \$7.2 million in fees for them.

Langford was convicted after trial of more than over 50 offenses, including bribery, money laundering, conspiracy, mail fraud and wire fraud. *United States v. Langford*, Case No. 08-0245, R227, Judgment. The Government described the scheme as "enormous." *Id*, R222, United States Sentencing Memorandum. The Government asked the court to impose a sentence within the guideline range calculated in the PSR as 292-365 months. The court imposed a sentence of 180 months, approximately one half of the range.

5. Mark A. Ciavarella, Jr.

Mark Ciavarella was a Pennsylvania county Court of Common Pleas judge from 1996 to January 2009 who primarily served in juvenile court. His multiple charges, including racketeering conspiracy, honest services mail fraud, conspiracy, money laundering and tax violations, resulted from a notorious “Kids for Cash” scheme executed in Luzerne County, Pennsylvania, beginning in 2008. *United States v. Ciavarella*, 716 F3d 705 (3rd Cir. 2013). According to the Court of Appeals opinion, “Ciavarella committed hundreds of juveniles to detention centers co-owned by Powell [a co-conspirator], including many who were not represented by counsel, without informing the juveniles or their families of his conflict of interest.” *Id.* He received more than \$1 million in referral fees from his codefendant. His conduct was considered particularly egregious because: “In many cases, with the intent of increasing his personal gain, Ciavarella disregarded the recommendation of juvenile probation officers evaluating the juvenile offenders’ cases and ordered their detention.” *Id.* He was convicted of 12 charges by a jury in February 2011.

Ciavarella’s guideline range was “life.” The district court sentenced Ciavarella below his guideline range to a term of 336 months, or 28 years. *United States v. Ciavarella, Jr.*, Case No. 9-272-02, MD Pa, R269, Judgment, 8/11/11.

6. Congressman James Traficant

Former Ohio congressman James Traficant was convicted of bribery, racketeering, fraud, and tax evasion based on his demands for thousands of dollars in goods and services from businesses in return for intervening in state and federal

criminal and enforcement proceedings on behalf of a constituent. *United States v. Traficant*, 368 F3d 646 (6th Cir. 2004). He was sentenced to a term of 8 years.

7. James C. Dimora

James Dimora had been the highest ranking public official for Cuyahoga County, Ohio. He was convicted of accepting bribes that arose from every aspect of his responsibilities over a period of about six years. The Government said his offense level was 43 and the corresponding range was “life.” *United States v. Dimora*, Case No. 2010-00387 (ND OH). The court calculated Dimora’s guideline range as 292-365 months. The Government recommended a sentence of 22 years. The court imposed a within the guidelines sentence of 28 years.

8. Joseph Ganim

Joseph Ganim was the former mayor of Bridgeport, Connecticut. He was convicted on March 19, 2003 of receiving more than a half million dollars in cash, meals, clothing, and home renovations from city contractors. His offenses included racketeering, racketeering conspiracy, honest services mail fraud, bribery, conspiracy and tax violations. His sentence guideline range was 97-108 months. He was sentenced to a term of 108 months.

B. THIS CASE AND RELATED CASES

This Court can also look to sentences imposed in this case on co-defendants and on co-defendants in related cases. “A district judge, however, may exercise his or her discretion and determine a defendant’s sentence in light of a co-defendant’s sentence.” *United States v. Simmons*, 501 F3d 620, 623 (6th Cir, 2007). Exhibit A

includes full information on Defendant's co-defendants.

1. Derrick Miller

Derrick Miller pled guilty in this case to charges of bribery and filing a false tax return. He was originally charged along with Mr. Kilpatrick as a co-Defendant. His charges included RICO conspiracy and three counts of extortion. Based on his negotiated plea, he faced a reduced maximum penalty of 10 years custody. According to his plea agreement, he accepted \$115,000 as bribe payments from a real estate broker in connection with the sale or lease of City of Detroit properties; and he failed to report income on his tax returns for 2007 resulting in tax due to the United States of \$240,858. In addition, the Government attributed the following to him as relevant conduct: two payments of \$10,000 each from Cobo Hall contractor Karl Kado; receipt of more than \$10,000 from Andrew Park in connection with the award of a security camera contract to Park's company; and, pressuring contractors to put Bobby Ferguson on city contracts. According to the Government's Rule 11 Agreement, Miller's guideline range was 168-210 months, but the Government agreed his sentence would be limited to the statutory maximum of 120 months for the bribery offense.

2. Karl Kado

Karl Kado was charged separately in 2008 with making false statements on tax returns by failing to declare \$270,000 in income. Mr. Kado pled guilty and was sentenced by the Hon. Marianne O. Battani to 36 months probation.

3. Victor Mercado

Victor Mercado was charged as a co-conspirator in this case and went to trial in this case until he pled guilty to a single five year conspiracy charge. He admitted as part of his plea that he from time to time “influenced” the award of subcontracts in the water department to Bobby Ferguson. According to his plea agreement with the Government, Mercado’s guideline range is higher than the 60 month maximum for his offense of conviction, his “range” is thus 60 months, and the Government is recommending a departure sentence of not more than 18 months. Mercado has not been sentenced.

VIII. CONCLUSION

In light of all the factors discussed in this Brief and the evidence presented at trial, and based on a full and fair consideration of all the factors set forth in 18 USC §3553 (a), Defendant respectfully urges this Court impose a sentence of not more than 180 months.

Respectfully Submitted,

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Date: October 6, 2013

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all parties of record.

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